

**Ex. BB**

N506AMEC

CONFERENCE

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 AMERIWAY CORPORATION,

4 Plaintiff,

5 v.

19 CV 9407(VSB)

6 MAY YAN CHEN, ABILITY CUSTOMS,  
7 INC., et al.,

8 Defendants.

-----x

9 New York, N.Y.  
10 May 24, 2023  
2:00 p.m.

11 Before:

12 HON. VERNON S. BRODERICK,

13 District Judge

14 APPEARANCES

15 PETER S. WOLFGRAM  
16 Attorney for Plaintiff

17 SCHRIER, FISCELLA & SUSSMAN, LLC  
18 Attorney for Defendants  
19 BY: RICHARD E. SCHRIER

20 -and-

21 WILLIAM C. SHAYNE  
22 Attorney for Defendants  
23  
24  
25

N506AMEC

CONFERENCE

(All parties appearing telephonically)

THE COURT: If we could go on the record? And if I could ask the parties to please identify themselves for the record, beginning with counsel for the plaintiff, Ameriway Corporation.

MR. WOLFGRAM: Yes, your Honor, this is Peter Wolfgram. I'm joined by Xiyan Zhang, co-counsel.

THE COURT: Thank you. And counsel for defendants May Yan Chen and Ability Customs Inc.

MR. SCHRIER: This is Richard Schrier, and I have with me William Shayne.

THE COURT: Okay. Thank you. So this matter is on today, so we can discuss certain issues related to the application of plaintiff to file a second motion for sanctions.

There are certain issues that I think I do have some questions about, and then we can talk about the -- that relate to the proposed motion.

First let me ask defense counsel, with regard to the Customs and Border Protection regulation that is referenced in the footer of the various e-mails, does the defense dispute that the announcement of that regulation was in June of 2013 and then became affective, I think, in July?

MR. SCHRIER: To answer the question, because I want to answer it correctly, the formal announcement that you're referring to was made in June. However -- and I asked my

N506AMEC

CONFERENCE

1 co-counsel, Mr. Shayne, he's a customs attorney, he does --  
2 this is what he does for a living. But the short answer is, as  
3 the Court is well aware, the government doesn't do anything  
4 quickly.

5 The knowledge of the date that is the commencement of  
6 that provision was known many, many, many, many months before.  
7 It was talked about at a hearing -- hearings, meetings of  
8 different members, the trade meetings and trade talks, if you  
9 will. And it was something that was well -- if I might add, in  
10 the cargo import and export industry, most things are on the  
11 ships; nothing happens fast. The customs -- the brokers that  
12 get involved in this have to do things way in advance. So when  
13 something is -- for example, as with China, it could be four or  
14 five months before it gets to customs. So they need to have  
15 advanced knowledge of all these things.

16 So while the formal announcement was made in June of  
17 2013, as plaintiff references, it was well known in the  
18 industry well before that that the -- that there could be a  
19 limitation of that provision.

20 THE COURT: Let me ask a follow-up question relating  
21 to that. That was Mr. Wolfgram?

22 MR. SCHRIER: No. That was Mr. Schrier, the  
23 defendant.

24 THE COURT: Oh, okay. Mr. Schrier.

25 I should have mentioned this. When you do speak, if

N506AMEC

CONFERENCE

1 you could please identify yourself by name for the record so we  
2 make sure we have an accurate record.

3 All right. Let me ask Mr. Schrier, with regard to  
4 that, are you saying that this footer was created in advance of  
5 the June 2013 announcement?

6 MR. SCHRIER: Absolutely.

7 THE COURT: Well, has your client submitted an  
8 affidavit in connection with that?

9 MR. SCHRIER: Judge, we haven't had depositions in  
10 this case. We -- this case has been on hold because of the  
11 pending motion for, frankly, over a year at this point. We  
12 haven't had any discovery at all. The case has been -- so  
13 these things are taken, I believe, out of context.

14 We can go piece by piece, and I can address each of  
15 the points that have been raised. But the plaintiff has spent  
16 a lot of time trying to parse out things that he thinks are --  
17 you know, make the -- he's trying to make it seem that there's  
18 been some issue here that there's been some -- some purposeful  
19 changing of evidence to hurt the plaintiff in this case.  
20 That's so far from the truth.

21 All these things, if we just had our depositions,  
22 would come out very clearly as to what and why these things  
23 exist. The depositions that have been raised from the Court, I  
24 mean I can address each one with you. I'm happy to do that.  
25 But, frankly, the affidavit, we haven't gotten to that point

N506AMEC

CONFERENCE

1 yet. We're not there. This is all -- this is all way before  
2 we've even had depositions.

3 THE COURT: Well, I guess my question is is that there  
4 are various motions that are currently pending for which both  
5 parties have submitted information. Am I to understand that,  
6 for example, in connection with the -- if there is a motion, a  
7 second motion related to sanctions, would your client submit an  
8 affidavit in connection with that to explain the appearance of  
9 the footer on the January 8, 2013 -- the earlier e-mail?

10 MR. SCHRIER: The answer is absolutely. And what I  
11 would like to add, we're going to be -- once we get discovery  
12 going, we're going to be identifying someone in the field who  
13 is familiar with the processes of the government when it comes  
14 to this thing, to act as a witness. Absolutely. This is  
15 nothing that's new in the industry.

16 THE COURT: Let me ask, my understanding is that the  
17 e-mail -- that your client has no electronic versions of these  
18 e-mails; is that correct?

19 MR. SCHRIER: No. There's a certain period of time  
20 where they changed their systems, and we've been trying to get  
21 as many e-mails as we can. They're actually going through  
22 their old physical box to find e-mails.

23 As an example, they just pointed out in their last  
24 letter to you several discrepancies between two e-mails, except  
25 if the Court would notice, the e-mail comes from two different

N506AMEC

CONFERENCE

1 parties. One happens to be from the personal address of our  
2 client, who doesn't have the footer, and the other is from the  
3 company e-mail address which is info@, and that does have a  
4 footer. So, again, they tried to create a storyline which has  
5 an easy explanation, but, again, that would come out at  
6 depositions or trial.

7 But these people, they have whatever the number of  
8 staff are, but they do literally hundreds of e-mails a day,  
9 each person. And they don't have -- from back then, they don't  
10 have access to a lot of this. They have changed their systems,  
11 and some of it they do, but a lot of it they don't. And we've  
12 been trying -- the people go through literally hardcopy, you  
13 know here are banker boxes of hard records that they keep for  
14 seven years. At this point, they keep them longer because the  
15 lawsuit started.

16 THE COURT: So I guess what you're saying is that for  
17 certain -- is there some delineation in terms of time frame  
18 when they -- or documents they have electronically versus  
19 documents that they don't?

20 MR. SCHRIER: I'm just going to defer to my co-counsel  
21 because he's been dealing with it more directly, Bill Shayne.  
22 Bill, do you know what the --

23 MR. SHAYNE: Your Honor, this is William Shayne. The  
24 answer is, we don't have a clear delineation because we never  
25 asked the question to them in that particular way. I simply

N506AMEC

CONFERENCE

1 know from requests for the things that I've requested, which go  
2 back to this period, given that most customs brokers only keep  
3 records for five years. We're just lucky they kept anything  
4 that's older than that.

5 And I know that they have yelled at me, if you will,  
6 okay, because they have to have somebody go into a warehouse  
7 and manually go through the files. So I do know that at least  
8 when we get back this far, there's -- I don't know that there's  
9 anything available electronically. I will pose that question  
10 to them, but it was not one that I asked that way because it  
11 wasn't necessary.

12 THE COURT: Let me ask, is there an objection -- the  
13 plaintiff has asked me to take judicial notice on the date on  
14 which the June 7, 2013, date, which is the date of the  
15 announcement of the Customs and Border Protection regulation.  
16 Is there an objection to that? And if so, what is the basis?

17 MR. SCHRIER: I don't understand. I don't follow what  
18 you're asking.

19 THE COURT: I guess my understanding is it sounds like  
20 you happen to agree that it may have been announced on -- my  
21 understanding of what you had just said, Mr. Schrier, was that  
22 although that was announced on June 7, 2013, that people in the  
23 industry were aware that it was going to happen, is that what  
24 you're saying?

25 MR. SCHRIER: Yes, yes, that it was -- that there

N506AMEC

CONFERENCE

1 were -- there was not a formal announcement, but there was a --  
2 it was industry-wide known that there was going to be a change  
3 in the regulation. So I'm not disputing the formal  
4 announcement at the date of whatever it was, June 7, I believe  
5 it was, 2013. But it was a known situation in the industry  
6 before that.

7 I've actually asked my client to see if they can find  
8 whatever meetings they went to or seminars they went to, if  
9 they could get me anything that would indicate that. That's  
10 just more recently that that happened. So they haven't gotten  
11 anything yet. But I've asked that that be searched, so we  
12 could put aside this issue.

13 THE COURT: Let me ask, with regard to the -- and it's  
14 Document 164-1, Exhibit A to plaintiff's filing, was this  
15 email, as I understand it, this version of the e-mail was a  
16 hard copy? Is that correct, Mr. Schrier? And I'm sorry --

17 MR. SCHRIER: I'm just pulling it up, Judge. Let me  
18 take a look.

19 THE COURT: It may also be document 157-1. I'm not  
20 sure.

21 MR. SCHRIER: Yes, it's 157-1.

22 I'm going to ask my co-counsel just to confirm it, but  
23 I believe the answer is it was a hard copy.

24 MR. SHAYNE: Yes, your Honor. William Shayne. Hard  
25 copy.

N506AMEC

CONFERENCE

1 THE COURT: So as I understand what Mr. Schrier, what  
2 Mr. Shayne were being said, the reason for the footer is  
3 because your client, I guess back in January when this e-mail,  
4 the e-mail of January 2013, when this e-mail was purportedly  
5 sent, had already changed per the system such that when they  
6 sent e-mails, it would -- the footer would appear on the  
7 e-mail, is that my understanding of what is being said?

8 MR. SCHRIER: That is accurate. And I believe the  
9 discovery -- I don't remember if we provided a copy to counsel,  
10 but we've -- I found, if you will, a number of e-mails  
11 unrelated to our issue, but we found other e-mails that  
12 predates this that has nothing to do with our case but that had  
13 the footer on it.

14 And we're either going to have to deal with it at  
15 trial or depositions or motion, over my copies. Or, frankly,  
16 if you ask me to, I'll provide copies to counsel. I have no  
17 problem with that. But we found others with the same footer on  
18 it that had nothing to do with this case.

19 THE COURT: All right. Let me ask, was that  
20 Mr. Schrier?

21 MR. SCHRIER: That was Mr. Schrier. I'm sorry, yes,  
22 Mr. Schrier, yes.

23 THE COURT: Let me ask, with regard to the email --  
24 let me just reference the docket number. It is at Docket  
25 164-3, which is the e-mail, I think, to a different customer.

N506AMEC

CONFERENCE

1 And are you saying, Mr. Schrier, that there were two e-mails  
2 sent to this customer on the same day, at the same time, and  
3 one of them came from someone, Lilly, and someone came from  
4 May. And the one that came from Lilly was sent from the  
5 corporate address, and that's why the footer appears of the --

6 MR. SCHRIER: Yes, it's my understanding. I'm  
7 concerned about the time, Judge. And I've questioned the  
8 client about it. And they're trying to go through their old  
9 e-mails on that to see.

10 But the way their system works is they have -- first  
11 of all, I don't remember how many, but they have a number of  
12 people in the office. There's not one or two people. There's  
13 a group of people in the office. When e-mails come in under  
14 the info, which is the general company e-mail, each of the  
15 people, they also have computers, and they are set up with  
16 their footers and so forth. The one on the left is not from --  
17 is May's personal e-mail, not her company e-mail. If you  
18 notice, it's from May Chen, but it says e-mail to -- e-mail  
19 at -- in reply to the info e-mail. That's the company e-mail.  
20 The one on the right is the info e-mail. That's the company  
21 e-mail. The company e-mail is set up so they have the footer,  
22 her personal e-mail was not set up that way at the time. I  
23 don't think it is set up that way this way either.

24 Why she did it? There's an e-mail that came in, if  
25 you notice, one is to May and one was to Lilly, which means

N506AMEC

CONFERENCE

1 that -- why -- I mean, it's two different people, obviously.  
2 But the one to May went to her personally, or she -- it went to  
3 info but it's addressed to May. So when it came -- we're  
4 guessing. This happened ten years ago, but it came to her, to  
5 her attention, and she replied from her personal e-mail.

6 Well, it happened at the same time. I just question  
7 the answer also, that they both saw it, and they just happened  
8 to be done. It's that much of a coincidence. I don't know the  
9 answer, Judge. I can tell you it came from two different  
10 computers. One was addressed to Lilly and one was addressed to  
11 May.

12 Obviously, you know, this letter is the first time --  
13 we haven't done discovery, but I'm certainly going to want to  
14 contact this client, which I don't know if they're still a  
15 client or still in business anymore. I have no idea. Again,  
16 this is 10 years ago. But it's clearly from different e-mails,  
17 that's all I can tell you at this point.

18 THE COURT: Let me ask with regard to the issue  
19 relating to the knowledge of the -- in other words, what was  
20 happening in the industry? Is that something that, in any of  
21 the submissions that I've gotten, that argument has been made  
22 by the defendant? Defendants, Mr. Schrier?

23 MR. SCHRIER: I'm not sure what you're asking, Judge.  
24 Again, I don't believe the issue of what was done in the  
25 industry was -- well, I'm going to stop there. I'm going to

N506AMEC

CONFERENCE

1 ask Mr. Shayne. Bill, do you remember anything like that that  
2 was done in this case so far?

3 MR. SHAYNE: I can't remember anything like that that  
4 has been made. I simply know from -- your Honor, this is  
5 William Shayne. I simply know from four decades in the  
6 industry, both working in the industry as opposed to just as a  
7 lawyer, that these types of things were commonly addressed and  
8 known. They always knew it well in advance. It's just the way  
9 the nature of the industry works. But, however, I do not  
10 recall that we've ever raised that question in any of our  
11 pleadings.

12 THE COURT: Okay. Or in response to anything the  
13 plaintiffs have filed relating to the initial discrepancy in  
14 the e-mails or in connection with their initial sanctions  
15 motion?

16 MR. SHAYNE: That is correct, your Honor. What we did  
17 instead was that the focus was on other documents that had also  
18 been sent out during that time frame that also had the same  
19 information on it, and we obtained the use of a document, you  
20 know, document specialist who was experienced in this field.  
21 And that was her, you know, expert opinion that we sort of  
22 submitted, and we figured that was -- went to the issue as to  
23 whether the documents themselves were manipulated, and her  
24 conclusion was that they weren't. So we did not go into the  
25 source of the date.

N506AMEC

CONFERENCE

1 THE COURT: Okay. Let me now ask first for  
2 plaintiff's counsel for any response to what defense counsel  
3 has said with regard to the two issues that I had raised.

4 MR. WOLFGRAM: Your Honor, this is Pete Wolfgram for  
5 plaintiff.

6 First, with regard to the CBP notice, there was  
7 nothing -- defendants haven't cited a single independent public  
8 source that references the exact July 9, 2013, start date. I  
9 looked on the docket, on the web, I couldn't find anything  
10 before the June 7 announcement from CBP. Nothing announces the  
11 July 9 -- the specific July 9, 2012, start date.

12 The defendants are saying this was common knowledge  
13 that there would be a policy change in the future, but there's  
14 nothing in the public realm which discusses the exact July 9  
15 date, and that is the whole point. And so they might get an  
16 affidavit from an expert saying, well, you know, people in the  
17 industry knew that this policy change was going to go into  
18 effect in the coming months, and that is true. Members in the  
19 industry were anticipating an announcement from CBP to state  
20 exactly when, which date, the new policy would take effect.  
21 And that's the whole purpose of CBP's June 7 announcement, to  
22 give an exact date to the industry.

23 We also provided a link to the agency's website. And  
24 if you do a simple Google search relating to this, CBP -- I  
25 provided some search terms in our letter. A simple Google

N506AMEC

CONFERENCE

1 search of ISF enforcement, CBP July 9, 2013, will generate  
2 literally dozens and dozens of articles from members from the  
3 transportation industry, including major ports, major law  
4 firms, customs brokers, carriers, picking up this news story  
5 from CBP about the exact start date because they wanted to give  
6 their customers notice of when it would begin to avoid these  
7 penalties.

8 So there's no way that defendant Chen could have known  
9 the exact date six months in advance before CBP even issued the  
10 message. There's just no way she could have known that. And  
11 that's corroborated, of course, by the e-mail, which we cited  
12 from Chen's customer, which, from this -- excuse me. I'm just  
13 trying to get the date here, January 3rd, 2013, e-mail to  
14 TCPL Logistics.

15 That's -- you know, so defendants submit their expert  
16 report to try to rebut our CBP evidence, which we submitted in  
17 September in a letter motion to the Court. Four months later,  
18 May responded with this expert report with the -- the forensic  
19 expert, Ms. Mitchell, and included ten additional e-mail  
20 printouts, not native files, but printouts, once again. And  
21 she generally concluded that the footer was authentic, but she  
22 did not address the CBP evidence. I don't even think she  
23 received it. Her report doesn't even indicate that she  
24 received this obvious contrary evidence from defendant's  
25 counsel.

N506AMEC

CONFERENCE

1 And so we were forced to investigate the authenticity  
2 of this new batch of e-mails sent to your Honor in early  
3 January, January -- I think 3rd or 4th of this year. And the  
4 e-mail printouts are redacted. Defendant does redactions in  
5 all of these e-mail printouts, you know, purging all of the  
6 customer information based on the pretext of the  
7 confidentiality of CFR regulations. We think the defendants  
8 are just trying to stop us from independently investigating the  
9 printouts' authenticity as to third-party discovery.

10 In any event, as I explained in my letter, some of  
11 the -- they left this Cyntra Giboney name, and I tracked it to  
12 PCCL Logistics, and talked to their legal counsel, who was  
13 fully cooperative, and I asked them to look for this exact  
14 e-mail string down to the minutes, if they could on PCCL's  
15 server, and they found it, down to the minute.

16 Mr. Shayne and Mr. Schrier is trying to dance around  
17 it by saying that it came from two different sources, but the  
18 recipient, Cyntra Giboney, is the same, on the same minute.  
19 And the contents of her e-mail was also the same.

20 I also have -- after I submitted our letter, I also  
21 have an affidavit from COO PCCL Logistics, Brian Howver  
22 attesting to the authenticity of PCCL's original e-mail file.  
23 It's an objective independent third-party. There's no -- they  
24 can't -- their file cannot be seriously disputed. They don't  
25 have any other file from defendants' standing on this exact

N506AMEC

CONFERENCE

1 minute as Mr. Schrier claims. It's just impossible. And when  
2 you consider this evidence in light of the CBP evidence, it's  
3 just overwhelming. The printouts are fabricated.

4 And, I mean, this issue keeps -- this authenticity  
5 issue has been going on for 18 months. Defendants' counsel  
6 keeps saying we went to get into depositions and all that,  
7 well, the evidence is here. I don't think they could explain  
8 anything that would overcome this.

9 So that's why we are looking to ask the Court to take  
10 judicial notice of the CBP bulletin and then file another  
11 motion for sanctions. I don't really think it's necessary  
12 given the weight of the evidence here, but if we have to, we  
13 will.

14 THE COURT: Okay. As I understand what you're saying  
15 is that although known in the industry -- in other words, that  
16 this was coming down the pike, in other words, the regulation,  
17 the exact date of when it was going to be enforced was not  
18 known. And that only became known on June 7, 2013, to the  
19 public when CBP announced the regulation and basically said it  
20 would be enforced beginning in July of 2013. Is that an  
21 accurate statement, Mr. Wolfgram?

22 MR. WOLFGRAM: Yes. That's exactly correct.

23 And if the Court -- the Court has an interest  
24 obviously in investigating whether a fraud is being perpetrated  
25 on, and if the Court uses those search terms I provided in

N506AMEC

CONFERENCE

1 my -- our letter, it will see literally dozens of articles from  
2 members of the trade industry, like I said, talking about the  
3 CBP's June 7 announcement. Nobody knew it before. Nobody knew  
4 the exact date before then. Otherwise, somebody would have  
5 published it, and defendants haven't produced a single  
6 objective -- not an affidavit from their client, but an  
7 objective source, records of the specific July 9 start date.  
8 And that's the whole point.

9 THE COURT: Sorry. Who --

10 MR. SCHRIER: This is Richard Schrier.

11 THE COURT: Mr. Schrier, go ahead.

12 MR. SCHRIER: So he said we haven't done anything,  
13 they haven't given any affidavits or anything. Discovery has  
14 been put on hold if, I'm not mistaken, since April of 2022. We  
15 haven't done any discovery. There's no -- we can't do document  
16 exchange. We can't do document requests. We can't take  
17 depositions. He's making all these judgments.

18 This is -- at this point, it's, from my view, at worst  
19 a question of fact. Let's do discovery. Let's do that. Let's  
20 take the depositions. We will get the affidavits. Then when  
21 the dust settles, if he still thinks there's a fraud on the  
22 Court, he can make his application at that point. It's  
23 premature at this point to do that. There are reasons, but we  
24 haven't gotten into them because the case has been put on hold  
25 because of the pending motions for -- with regard to the

N506AMEC

CONFERENCE

1 whether counsel should be removed on both sides. You know,  
2 there are cross-motions on that.

3 So I would ask that the Court rule on those, and then,  
4 hopefully -- I mean, there are reasons for plaintiff's counsel  
5 to be removed. We could get into that. But the plaintiff's  
6 counsel is the principal -- Mr. Zhang is the principal of  
7 Ameriway, and Eagle, which is the real party that -- Ameriway  
8 is the right party. As far as defendants' concerned, we  
9 intended to address that once we finish deposition. But we  
10 can't get to that point until we get to the heart of discovery.  
11 We just -- I've being document discovery, and it stopped a year  
12 ago. So I would request that what the Court may do, hold on  
13 until we finish discovery, and then raise the issue if it  
14 really exists at that point.

15 THE COURT: This is what I'll --

16 MR. SHAYNE: Your Honor, this is what --

17 THE COURT: One moment. I'll allow you to speak. Is  
18 that --

19 MR. SHAYNE: William Shayne.

20 THE COURT: Mr. Shayne. Why don't you go ahead,  
21 Mr. Shayne, since that was Mr. Schrier, if you want to complete  
22 a thought.

23 MR. SHAYNE: The point, as I look at it, okay, is they  
24 want to establish by using the question as to the date, okay,  
25 whether the e-mail itself that they were sent with notices was

N506AMEC

CONFERENCE

1 routinely issued and was, in their views, falsified. So then  
2 the question is, are they prepared to show that every one of  
3 the documents that we submitted to our expert, the expert  
4 opined upon, they're saying that because they have that date,  
5 that every one of the documents is false.

6 THE COURT: Well, I mean, I'm not sure that -- and I'm  
7 not going to get into it, but what I will say is the following.  
8 If I make a determination, in essence, that I hold in abeyance,  
9 even if I grant Mr. Wolfgram and what I may do is give you the  
10 option of filing the second sanctions motion now or waiting.  
11 But typically, what I typically do with regard to the sanctions  
12 motions is I do await a certain amount of discovery.

13 However, what I will say here is that if I ultimately  
14 conclude that the e-mails either were not necessarily  
15 fabricated, but generated more recently than back in 2013 or  
16 that they are not somehow legitimate, either because there are,  
17 in fact, electronic copies or not, the sanctions -- well, I  
18 would consider an application with regard to whatever the  
19 damages might be, which could include the cost, basically, of  
20 the discovery process because counsel for plaintiff has raised  
21 this issue early in the litigation.

22 But as I understand, the defendant said there are  
23 explanations, but that the explanations, some of which have  
24 been made to me, but others have not, in any way that -- and by  
25 that I mean through affidavits of applying, other than the

N506AMEC

CONFERENCE

1 expert reports, which I have, haven't been necessarily  
2 supported.

3 So if counsel is -- and all I have to go on is  
4 representations with the belief that these are all these  
5 explanations for it, then I guess what you'll say,  
6 Mr. Wolfgram, I'll give you the opportunity to file the second  
7 sanctions motion. I'll give the defendants an opportunity to  
8 respond. And in that response, if they -- I would expect to  
9 see something in the form of an affidavit from the client, or  
10 someone at the client, indicating that they were aware of the  
11 July 9, 2013, enforcement date at least by January 8 of 2013,  
12 if not earlier. Because as I understand it, there were some  
13 e-mails produced to me that may go back as far as December of  
14 2012 that contain the footer.

15 So I expect any response to correctly address that  
16 issue in an affidavit of somebody with personal knowledge. Or  
17 if there is independent -- I know without going to into what my  
18 chambers may have done to look into the issue, if there is  
19 public information that predates the June 7, 2013, date  
20 announcement by CBP, then counsel should include that in the  
21 response to the second sanctions motion also.

22 In other words, if there is something in the public  
23 domain, public record, indicating that the July 9, 2013, date  
24 was going to be the date of enforcement of the Customs Bureau,  
25 then that should be included also.

N506AMEC

CONFERENCE

1 I have currently before me the motions to disqualify,  
2 which I will decide. But I would say the following in terms of  
3 the motion -- well, let me ask plaintiff's counsel first a  
4 question.

5 In regard to the disqualification motion --

6 MR. WOLFGRAM: Yes.

7 THE COURT: -- as I understand it, the allegation is  
8 that Mr. Zhang is a potential witness. Let me first confirm,  
9 Mr. Schrier --

10 MR. SCHRIER: Yes, he's the principal of both  
11 companies.

12 THE COURT: But is the disqualification -- well, let  
13 me ask Mr. Wolfgram in connection with Mr. Zhang. My  
14 understanding is that Mr. Zhang will not be trial counsel; is  
15 that correct?

16 MR. WOLFGRAM: That's correct, your Honor.

17 THE COURT: And what would be the position of  
18 plaintiff to Mr. Zhang possibly being subject to discovery; in  
19 other words, depositions and the like?

20 MR. WOLFGRAM: He's agreed to be deposed.

21 THE COURT: Okay. So as I said, I currently have the  
22 motions to disqualify, and I will decide those.

23 But, Mr. Wolfgram, I understand that you were saying  
24 earlier that, well, even on the record, you're not sure that a  
25 second motion is necessary, but I'm giving you the opportunity

N506AMEC

CONFERENCE

1 at this stage to file it, the second motion, based upon the  
2 second round of documents that were sent. And give, as I've  
3 outlined, the defendants the opportunity to respond to that but  
4 with actual affidavits and things that they believe would rebut  
5 it, which would be helpful to me in making terminations  
6 concerning the timing of any decision on the sanctions motion.  
7 As I said, my normal course is to wait. Having said that, I do  
8 think I need some additional information before I make that  
9 assessment.

10 But I'm not making a ruling on the motion to  
11 disqualify right now. I won't issue that, a decision on that  
12 based on the papers that have been submitted.

13 MR. WOLFGRAM: Your Honor, this is Pete Wolfgram for  
14 plaintiff.

15 Our motion is also -- it's a motion for  
16 disqualification, and it's actually our first -- it's also a  
17 motion for dismissal of attorneys' fees. It's also a  
18 terminating sanctions motion because our first motion, the  
19 e-mail printout here concerns the secondary documents that  
20 defendant Chen relied on in this case.

21 Our first motion concerns a different document that  
22 defendant Chen submitted in this case, and upon investigation,  
23 we learned that Mr. Shayne, defendant's counsel, created the  
24 document itself.

25 So our first motion for sanctions is against Chen and

N506AMEC

CONFERENCE

1 her counsel for fabricating the first main documents, and then  
2 concealing the fabrication over the course of several months.  
3 So this is the story. This is Part 2 of the story. This is --  
4 Part 1 concerns the main documents that defendant Chen  
5 originally relied on.

6 MR. SCHRIER: This is Richard Schrier. I'd like to  
7 actually respond to this, Judge.

8 THE COURT: Yes, Mr. Schrier.

9 MR. SCHRIER: In the papers, just to backtrack,  
10 Mr. Shayne is in the field, as I mentioned. When the defendant  
11 came to him to be retained, as he does with every single  
12 client, he updates a lot of their documents relating to their  
13 business. We represent -- I don't know how many dozens and  
14 dozens and dozens of customs brokers -- that is Mr. Shayne's  
15 main business, actually. And he, in the regular course of  
16 that, has a power of attorney with terms of conditions that's  
17 updated based upon rulings and so forth, and he gives that to  
18 all of the clients as a matter of course when they are  
19 retained. And he recommends that they put that on their  
20 website, which happened in this case.

21 When -- and I do trial work. I don't do much in the  
22 import/export field except in a case like this. When certain  
23 demands were made, not realizing I went to the file -- it's my  
24 fault. It was one of my juniors that was working with me at  
25 the time, attached the new one instead of the one that was in

N506AMEC

CONFERENCE

1 effect. We didn't realize that first that's what happened.  
2 Plaintiff argued what he's arguing, but when I looked into it,  
3 I realized that we had inadvertently done that. I took  
4 responsibility for it because that was my fault, and then it  
5 was produced. I got the correct one. I notified the  
6 magistrate judge at the time, which I believe she's now  
7 retired, explained the situation, produced it as quickly as I  
8 could. And that's the terms and conditions that were in effect  
9 in 2017 when these -- not Ameriway because Ameriway was never  
10 retained. They were retained -- the plaintiff as the broker.  
11 Rather when Mr. Zhang, as the COO of Eagle, retained the  
12 defendants as the Customs broker -- the importer of record of  
13 all these goods.

14 So that was me. I fessed up very quickly as soon as I  
15 realized the mistake. It didn't impede any of the discovery.  
16 I put that in my affidavit. But Mr. Wolfgram feels compelled  
17 that that's -- he made that motion, notwithstanding, after we  
18 went through that exercise. And, obviously, he has the right  
19 to do it, and we replied. Obviously, the Court can decide on  
20 the papers. But that's the basis of it.

21 Mr. Shayne had nothing to do with it. It was my  
22 oversight and the staff that works with me in litigation, and  
23 that's what happened. If that's a basis to be disqualified,  
24 then, well, I assume that's in the Court's discretion. But  
25 that wasn't done intentionally or anything to subvert that --

N506AMEC

CONFERENCE

1 anything that would be improper in a court proceeding.

2 THE COURT: Okay.

3 MR. SCHRIER: Having said that, there's one other  
4 issue I'd like to raise with the Court after there's anything  
5 else, if anyone wants to raise anything else with the Court.

6 THE COURT: Before we get to that, let me ask  
7 Mr. Wolfgram, how much time would you like to submit for the  
8 motion?

9 MR. WOLFGRAM: Two weeks. I'd like to do it as  
10 quickly as possible.

11 THE COURT: Mr. Schrier, Mr. Shayne, how much time  
12 would you like to oppose it?

13 MR. SCHRIER: Good question. We have to get  
14 affidavits and do some research. Frankly, I'd like until the  
15 second week of July to oppose, if possible.

16 THE COURT: Okay. Let me just look at the calendar.

17 Why don't we say with the second motion, Mr. Schrier,  
18 why don't we say a little bit more than two weeks, so by  
19 June 9, Mr. Schrier.

20 MR. SCHRIER: I'm the defendant --

21 THE COURT: I'm sorry. I'm sorry. Mr. Wolfgram,  
22 June 9.

23 MR. WOLFGRAM: June 9 is fine. That's good, your  
24 Honor. That's good with, your Honor.

25 THE COURT: Great. And then for the reply by July 14?

N506AMEC

CONFERENCE

1 MR. SCHRIER: That would be fine, Judge.

2 THE COURT: Opposition, I should say.

3 Mr. Wolfgram, do you want an opportunity to reply?

4 MR. WOLFGRAM: Yes, your Honor.

5 THE COURT: Would one week be sufficient?

6 MR. WOLFGRAM: That's sufficient.

7 THE COURT: So July 21 for reply on the second  
8 sanctions motion.

9 I apologize, Mr. Schrier, you had another issue you  
10 wanted to raise?

11 MR. SCHRIER: This is an issue -- we haven't sent the  
12 letter to the Court, and if needs be, I'll follow up with a  
13 letter application. But in the case, there are five containers  
14 of cargo which the defendants asserted a lien on. Part of the  
15 case is whether the -- well, we don't have to get into that.  
16 There was an inspection over a year ago, and the cargo was put  
17 into a warehouse in New Jersey, which it still is, which still  
18 exists, and the containers were returned to whatever their  
19 respective owners were.

20 Since this is a case that is taking quite a long time,  
21 if we're actually going to try the case, my suggestion is  
22 instead of having the goods sit there, that maybe we can make  
23 some sort of arrangement to arrange for the sale of the goods  
24 and the money be deposited in Court. This way, whoever is  
25 entitled to whatever money, it can be -- it will be a little

N506AMEC

CONFERENCE

1 easier once there's a judgment in the case, whichever way it  
2 goes.

3 Is that something that the Court would entertain at  
4 this point?

5 I guess the plaintiff, is that something the plaintiff  
6 would agree to?

7 THE COURT: Let me ask. That's the initial question.  
8 Is this, Mr. Schrier, something that you raised with the  
9 plaintiff, or is this the first time you're hearing it?

10 MR. SCHRIER: I don't think we raised it recently.  
11 But if we're talking about it, it's been a year, if it could  
12 effectively be resolved now; if not, maybe we can make a motion  
13 for it. But I guess the question is, is that something that  
14 would be amenable?

15 THE COURT: Let me hear from Mr. Wolfgram.

16 MR. WOLFGRAM: I would need time to consider that.  
17 Offhand, we'd have to talk with defendants' counsel. This is  
18 kind of a very big request. And since this is the main issue  
19 of the case, offhand I'd say no. Defendants detained the  
20 containers over two liens, two lien documents, which we are  
21 disputing, which we believe are fabricated. So it's her burden  
22 now to pay the storage fees on those containers until there's a  
23 conclusion, the trial. I mean, I'll talk to my client, and  
24 we'll get back to you, Richard.

25 THE COURT: I think that makes sense. What I would

N506AMEC

CONFERENCE

1 say is, obviously, there would have to be a process that both  
2 parties would agree to. I'm not in any way opining on the  
3 request for -- or any impact it might have here. But just what  
4 pops into my mind is who's going to be responsible for selling  
5 the product, how are you going to ensure that the sales are --  
6 or the transactions are the appropriate value and the like. I  
7 mean, there are a whole bunch of things before you even start  
8 considering what is the impact and would the parties have to  
9 agree to, that the case would still proceed even though the  
10 basis for the case has been, in essence, liquidated and the  
11 funds placed in escrow.

12 There are both a lot of logistical and legal things  
13 that the parties need to consider. And, obviously,  
14 Mr. Wolfgram, initially you need to raise the issue with your  
15 client to see whether they -- whether your client has an  
16 appetite for that, what is being suggested. So I'll leave that  
17 to the parties. And if there is an agreement or no agreement  
18 between the parties, let me know.

19 So we have the briefing schedule for the second  
20 sanctions motion. Let me just confirm that the motion -- and  
21 I'm fairly confident I know the answer. The motions to  
22 disqualify, that's fully briefed, and there are no other  
23 submissions that either party intends to submit. Is that  
24 correct from the plaintiff, Mr. Wolfgram?

25 MR. WOLFGRAM: Yes, your Honor. Essentially, again,

N506AMEC

CONFERENCE

1 our motion is for disqualification and terminating sanctions.  
2 This is a continuance of the first. So I would ask the  
3 Court -- it's a lot of papers since we have filed. I'd ask the  
4 Court possibly to consider the first motion first in line with  
5 the second motion. I don't know how the Court will look at the  
6 motions, in order or whatnot.

7 THE COURT: I mean, my intention was to look at the  
8 disqualification motion first, unless you're saying that  
9 that --

10 MR. WOLFGRAM: No, that's fine. Thank you. That's  
11 good. Thank you.

12 THE COURT: All right. Mr. Schrier, is there anything  
13 else from the defendants with regard to the disqualification?

14 MR. SCHRIER: No. My understanding is that the  
15 disqualification motion has been fully briefed and submitted.

16 THE COURT: So I'll deal with that motion. And then  
17 when the other motion is fully submitted, I'll review that.

18 So let me ask, is there anything else that either  
19 party believes that we should deal with today or anything that  
20 I have missed related to today's conference?

21 MR. WOLFGRAM: I have nothing more, your Honor. This  
22 is Pete Wolfgram for plaintiff.

23 THE COURT: Okay.

24 MR. SCHRIER: This is Richard Schrier. I think we  
25 covered everything.

N506AMEC

CONFERENCE

1 THE COURT: Thank you, counsel. I think this has been  
2 helpful in clarifying everyone's arguments. I look forward to  
3 getting your papers on the second sanctions motion.

4 Thank you very much. Court is adjourned.

5 (Adjourned)